IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 220 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MORARBHAI J AHIR

Versus

DEPUTY COLLECTOR

Appearance:

MR. Kothari, with Mr. SN SOPARKAR for Petitioner.

RULE SERVED for Respondent No. 1

NOTICE SERVED for Respondent No. 2-4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 21/06/2002

ORAL JUDGEMENT

The petitioners have filed this petition under Articles 226 and 227 of the Constitution of India challenging the order dated 24.7.1992 passed by the Gujarat Revenue Tribunal [GRT] in Revision Application No. TEN B.S. 309/88 filed by the petitioners under

Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the 'Act') challenging the order dated 1.7.1988 passed by the Deputy Collector, Navsari. The petitioners have prayed for quashing and setting aside the said orders. The petitioners have also prayed for the interim relief against the implementation, execution and operation of the impugned orders dated 1.7.1988 as well as 24.7.1992.

2. The brief facts, giving rise to the present petition, are that the petitioners are agriculturists of Village-Moldhara. One Chhitabhai Karsanbhai Rathod, husband of respondent No.2 and father of respondents, No. 3 and 4 had agreed to sell to the petitioners certain plots of land in the year 1970 which are referred to as the 'disputed plots'. The petitioners had paid substantial amount for purchasing the disputed plots and possession of the disputed plots has been handed over to the petitioners. As the disputed plots were covered under the provisions of the Act, said Chhitabhai Karsanbhai had undertaken the responsibility of obtaining appropriate permission under the Act for transferring the disputed plots to the petitioners. Since then the petitioners are in possession of the disputed plots and they have paid land revenue, expenses for water etc.,. The petitioners have been cultivating the disputed plots and taking crops from the said disputed plots of land from time to time.

3. It is further averred in the petition that on 9.3.1985, the said Shri Chhitabhai Karsanbhai expired. Thereafter, only with a view to take possession of the disputed plots from the petitioners, the respondents No. 2 to 4 have moved an application dated 18.12.1986 contending that disputed plots of land could not have been transferred by any deed or agreement to sell. Pursuant to the said application an inquiry was held and thereupon the Mamlatdar on 12.4.1988 reported to the Deputy Collector, Navsari that the petitioners were in possession of the said land from 1967-68 as if the same was in breach of the provisions of Section 43 of the Act. The Deputy Collector therefore issued notices dated 21.4.1988 to the petitioners and the rest of the respondents and started further inquiry in the matter. After completion of the said inquiry, the Deputy Collector, Navsari had passed an order on 1.7.1988 and held therein that there was breach of provisions of Section 43 of the Act and therefore the lands were required to be confiscated and the lands should be vested in the State.

4. Being aggrieved by the said order of the Dy. Collector, Navsari, the petitioners have filed revision application before the GRT and the GRT vide its order dated 24.7.1992 had confirmed the order of the Dy. Collector and taken the view that there was breach of Section 32-R of the Act and thus, the revision petition filed by the petitioners came to be dismissed by the GRT.

5. The petition was admitted by this Court on 19.1.1993 and interim relief in terms of Para 7(B) was granted. Though appearance was filed on behalf of the respondent No.1, no affidavit-in-reply is filed till this date. Nobody appears on behalf of the respondents No. 2 to 4.

6. Mr. Kothari, learned advocate appearing for Mr. S.N. Soparkar, learned Senior Advocate appearing for the petitioners, has submitted that the orders passed by the Dy. Collector as well as GRT are patently illegal and violative of fundamental rights guaranteed to the petitioners under Articles 14 and 19(1)(g) of the Constitution of India. He has further submitted that the order passed by GRT runs counter to the order passed by the Dy.Collector. The only finding given by the Dy. Collector was that the transaction of purchase of the disputed plots from Chhitabhai by the petitioners was contrary to the provisions of Section 43 of the Act. He has further submitted that the provisions of Section 43 do not apply to the facts of the present case. When this aspect was pointed out to the GRT, instead of reversing the order passed by the Dy. Collector, the GRT confirmed the order of the Dy. Collector on another ground under Section 32-R of the Act. In view of these facts, he has submitted that both the orders passed by the authorities below are illegal and require to be quashed and set aside.

7. Mr. Kothari further contended that the whole inquiry was started grossly, belatedly, and was barred by the principles of limitation, estoppel and acquiescence. In support of this contention, he has pointed out that for the last more than 20 years, the petitioners were cultivating the disputed plots of land and they have spent substantial amount in developing the plots of land. The petitioners have been taking crops from the disputed plots and hence the petitioners have changed their position irretrievably and after two decades proceedings have been taken against the petitioners for the purpose of taking possession of the disputed plots of land. He has therefore submitted that neither in law nor in equity the impugned orders could have been passed.

8. Mr. Kothari, the ld. advocate has further submitted that at any rate the impugned order dated 1.7.1988 could not have been passed by the Dy. Collector as the proceedings for eviction under Sec. 84-C of the Act for breach of the provisions of Sec. 43 of the Act can be taken only by the Mamlatdar and Agricultural Lands Tribunal. However in the present case, proceedings were initiated by the Dy. Collector, Navsari and hence the said proceedings are without jurisdiction. Since the order passed by the Dy. Collector was a nullity the order passed in the revision petition was also a nullity.

9. With regard to first contention, that is provisions of Section 43 of the Act are not applicable to the facts of the present case, Mr. Kothari has relied on the decision of this Court in the case of Patel Chhotabhai Shankerbhai v. Patel Shantabhai Narshibhai, through heirs, (1975) 16 GLR Page 247, wherein it is held that there is nothing in Section 43(1) of the Bombay Tenancy Act to show that agreement of sale cannot be entered into before obtaining a sanction of the Collector. There is nothing in Section 32-R of the Tenancy Act to show that it has any application to the question of the possession of the person on the basis of the agreement of sale or that the possession of such person is illegal. It is, therefore, open for the party in possession of the land in view of an agreement of sale to raise the defence of part performance under Section 53-A of the Transfer of Property Act.

10. For the purpose of appreciating the controversy raised by the petitioners, it is necessary to examine the provisions contained in Section 43(1) of the Act. It reads as under :-

"43. Restriction on transfer of land purchased or sold under this Act.___ (1) No land or any interest therein purchased by a tenant under sections 17B, 32, 32F, 32I, 32-O, [32U, 43-1D or 88E] or sold to any person under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred,by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector.]"

A plain reading of this Section makes it clear that no land or any interest therein purchased by a tenant under the sections mentioned therein or sold to any person under Section 30-P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of amount as may be determined by the State Government. Such land can also be not partitioned without the previous sanction of the Collector. Here, in the present case, late Shri Chhitabhai Karsanbhai Patel was the tenant of the land and he had agreed to transfer the said land without obtaining any previous sanction of the Collector. He has therefore, committed breach of the condition laid down in Section 43(1) of the Act. Now, Section 43(2) states that any transfer or partition or any agreement of transfer, of any land or any interest therein in contravention of sub-section (1) shall be invalid. Since the disputed plot was received by the deceased Chhitabhai Karsanbhai under the provisions of the Tenancy Act, they were subjected to the restrictions imposed under Section 43 of the Act. The disputed plot could not have, therefore, been legally transferred by the holder in favour of anybody else except with the previous sanction of the Collector under Section 43 of the Act. The Dy. Collector, Navsari therefore has taken the view that the provisions of Section 43(1) were violated and hence the disputed plot was required to be acquired.

11. With regard to the second submission of Mr. Kothari, ld. advocate, that is, the eviction proceedings under Section 84-C cannot be initiated after the expiry of more than 20 years as the same are barred by limitation, he has relied on the decision of this Court in the case of Mangalbhai B. Prajapati v. State of Gujarat & Ors, [2001] 42(1) GLR 242, wherein it is held that the authority exercising powers under Section 84C of the Act had not exercised the powers within reasonable time and hence the impugned orders were required to be quashed. Mr. Kothari has further relied on the decision of the Supreme Court in the case of Mohammad Kavi Mohamad Amin vs. Fatmabai Ibrahim (1997) 6 S.C.C. 71, wherein the Court has taken the view that no time-limit prescribed for exercise of power under a Statute, it should be exercised within a reasonable time. As a matter of fact, this decision was referred to and relied on by the petitioners in the case of Mangalbhai B. Prajapati vs. State of Gujarat & Ors. (Supra). Here, in the present case, since the powers under Section 84-C were not exercised by the authorities within a reasonable

period, the Court should not go into the other aspects of the matter and straightway quash and set aside the impugned orders.

12. If the above ratio laid down by the Supreme Court, as well this Court, is applied to the facts of the present case, it is to be noted here that distinguishing feature between the present case as well as the cases before the Supreme Court as well as before this Court was that in both the cited cases, the sale deed was already executed and the possession and ownership of the properties were legally transferred and thereafter the proceedings were initiated. However, in the present case, till this date the Sale Deed was not executed. The petitioners have not become the owners of the land in the eye of law and the transfer of the disputed plots was in violation of the provisions contained in Section 43(1) of the Act. In such a situation, if the action is taken against the original land-owners as well as against the petitioners who are the transferees by virtue of an inheritance or otherwise, such an action can never be termed as barred by limitation. The reliance placed by Mr. Kothari, the learned advocate on the abovereferred two judgments is, therefore, uncalled for and the said judgments are clearly distinguishable.

13. As far as the applicability of Section 32-R is concerned, before I proceed to deal with the said issue, it is necessary to have a look at the provisions contained in Section 32-R of the Act. It runs as under:

"32R. Purchaser to be evicted if he fails to cultivate personally.__

If at any time after the purchase of the land under any of the foregoing provisions, the purchaser fails to cultivate the land personally, he shall, unless the Collector condones such failure for sufficient reasons, be evicted and the land shall be disposed of in accordance with the provisions of section 84C."

It stipulates that the purchaser under the Act has to cultivate the land personally. The GRT has rightly observed that if Chhitabhai Karsanbhai did not cultivate the land personally and parted with the same by any alleged unregistered deed presented as agreement of sale, then it would naturally follow that he failed to cultivate the land personally and thereby attracted the provisions of Section 32R of the Act. If the breach of Section 32-R is committed, then in that case the said

Section also presupposes an order of eviction and then disposal of the land in accordance with Section 84(c) of the Act. Section 84 (c) of the Act deals with Summary Eviction, which reads as under :

"84. Summary eviction.__ Any person unauthorisedly occupying or wrongfully in possession of any land -

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons, may be summarily evicted by the Collector."

It is, therefore, crystal clear that the so-called purchasers under the Agreement of Sale were unauthorisedly occupying the lands and were wrongfully in possession of the disputed lands. The petitioners were, therefore, not entitled to use and occupation of these lands and hence they were liable to be evicted under Section 84(c) of the Act. Since the petitioners were in unauthorised occupation of the wrongful possession of the lands in question, the petitioners were required to be evicted and the said disputed plots were required to be entered in the name of the State. Since this was done by the authorities below, the orders passed by them do not call for any interference of this Court.

14. There is another reason also for not interfering in the order passed by the authorities below. Both the authorities below have taken a concurrent view and since the present petition being the petition under Article 227 of the Constitution of India, this Court would not normally interfere in the finding given and the view taken by the authorities below, unless there was miscarriage of justice or the authorities have acted in excess of their jurisdiction. This being not the case, so far as the present petition is concerned, this Court takes the view that the orders passed by the authorities are just and proper and in accordance with the provisions of law.

15. This petition is, therefore, rejected. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]